

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT,
TRACK TWO SETTLEMENT, AND
ASTRAZENECA CLASS 2 AND 3
SETTLEMENTS

Judge Patti B. Saris

**CLASS PLAINTIFFS' SEVENTH STATUS REPORT FOR BMS AND
TRACK TWO SETTLEMENTS**

A. Background

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement (Docket No. 7313) and an Order for Final Consideration of the Track Two Settlement (Docket No. 7314) (collectively, the "November Orders"). The November Orders directed Class Counsel to provide monthly status reports "detailing the progress" of the BMS and Track 2 Settlements. This is the seventh such report.

B. BMS Proposed Settlement

On Monday, March 28, 2011 the Court heard argument in support of the parties' Joint Motion For Final Approval of the BMS Settlement. The Court also heard argument from one objector to the Settlement. At that hearing, the Court requested some additional information, including how rebalancing of the distribution of settlement funds to members of Class 1 could be accomplished. On May 2, 2011, Plaintiffs submitted a revised plan of allocation related to the BMS Settlement [Docket No. 7530]. The Court held a further hearing regarding final approval

of the BMS Settlement on May 5, 2011 and by electronic order preliminarily approved the revised plan of allocation. On May 24, 2011, the Court approved the form of notice to be sent to a limited number of class members [Docket No7541]. Pursuant to the May 24, 2011 Order, mailed notice was sent on May 26, 2011. The Court established a final fairness hearing related to the BMS Settlement on July 7, 2011

C. Track Two Proposed Settlement

On December 31, 2010, Class Plaintiffs filed a Status Report Regarding the Track Two Settlement. Docket No. 7367. In that report, Class Plaintiffs outlined for the Court's consideration the expense associated with direct mail notice to all 19.3 million individuals identified in CMS data as potential Class 1 members in the Track Two Settlement. Class Counsel also provided the Court with information on potential alternatives to the original direct mail notice plan and the expense associated with each. On January 7, 2011, in response to a motion for reconsideration of the Court's January 4, 2011 Order filed by TPP Allocation Counsel and the ISHPs (Docket No. 7379), the Court directed Class Counsel to proceed with the Alternative 3 notice and publication plan identified in Class Counsels' December 31, 2010 report. That alternative program consists of direct mail notice to 2.2 million individuals identified in the CMS data as having Class A drug administrations and a national media notice program directed at Class 1 members with Class B drug administrations.

In accordance with the revised notice program and schedule approved by the Court, on or before February 12, 2011, Rust mailed an initial notice to each of the approximately 2.2 million consumers identified in the CMS data. Each of the consumers responding were mailed a full notice with their pre-printed claim information. In addition, a national media campaign ran

between April 4, 2011 and April 18, 2011 to reach those consumers who will not receive direct mail notice.

A number of objections to the Track Two Settlement have been received. In accordance with the Court-established schedule, Class Counsel will file papers in support of final approval of the Track Two Settlement, including a response to objections, on June 1, 2011. A final approval hearing is scheduled for June 13, 2011.

Class Counsel note for the Court that on April 14, 2011 Health Care For All ("HCFA") filed a motion to withdraw as a Class 1 representative in the Track Two Settlement [Docket No. 7503]. HCFA offered to withdraw in order to avoid any conflict given the Court's Procedural Order of March 23, 2011 (Docket No. 7472) concerning HCFA. HCFA's motion to withdraw was opposed by Don Haviland [Docket No. 7528]. On May 5, 2011 the Court referred the motion to withdraw to Magistrate Bowler who heard oral argument on May 23, 2011. As of the date of this filing, no decision on HCFA's motion to withdraw has been issued.

D. The Next Status Report

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on July 1, 2011.

DATED: June 1, 2011

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Jennifer Fountain Connolly
Hagens Berman Sobol Shapiro LLP
1629 K St. NW, Suite 300
Washington, DC 20006
Telephone: (202) 355-6435
Facsimile: (202) 355-6455

Jeffrey Kodroff
John Macoretta
Spector, Roseman Kodroff & Willis, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Kenneth A. Wexler
Wexler Wallace LLP
55 W. Monroe, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Marc H. Edelson
Hoffman & Edelson LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S SEVENTH STATUS REPORT FOR BMS AND TRACK TWO SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on June 1, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman